

PROGRESS REPORT NO. 19

**MICHIGAN COURT OF APPEALS
DELAY REDUCTION PLAN**

February 5, 2007

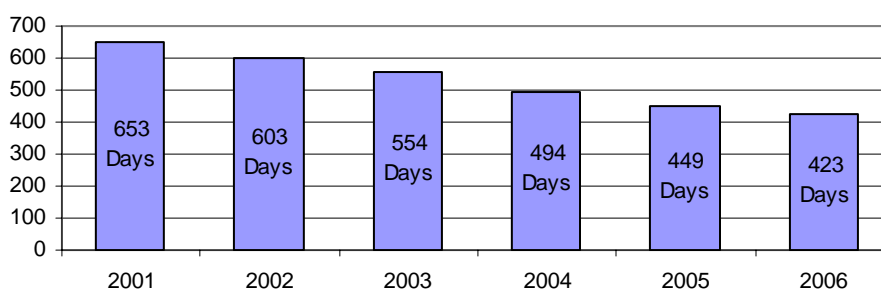
William C. Whitbeck
Chief Judge
Michigan Court of Appeals

I. EXECUTIVE SUMMARY

In March of 2002 the Michigan Court of Appeals adopted a long-range goal of disposing of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, the Court has made important progress toward achieving that goal and has issued eighteen Progress Reports documenting that progress. This Progress Report No. 19 that sets out data covering 2006, in which the Court made further reductions in the time it takes to decide a case on appeal.

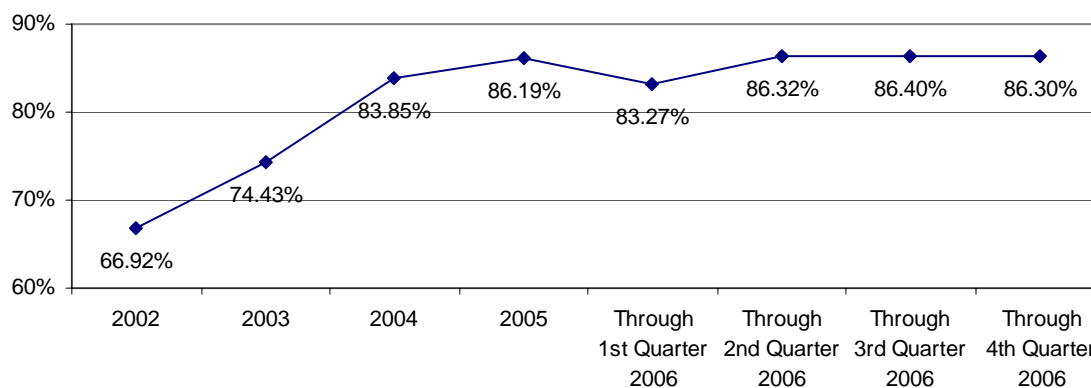
As shown below, during 2006 the Court maintained the progress it achieved in prior years:

Overall Average Processing Times



In the base year of 2001, it took 653 days to move an opinion case through the Court. In 2006, it took 230 fewer days on average to move an opinion case through the Court than it did in the base year. Thus, the Court has continued the progress toward delay reduction that has previously achieved. Indeed, the Court has cut the average time it takes to decide an opinion case by over 35%. In the process, the Court has again increased the percentage of cases it decided within 18 months of filing:

Percentage Of Cases 18 Months Old Or Less At Disposition



2006 has been a difficult year for delay reduction at the Court of Appeals. Although the Court did make modest progress in the second and third quarters, it actually regressed in the fourth quarter when its overall average processing time increased. The Court's overall goal is to

decide 95% of its cases within 18 months of filing. However the Court's FY 2006 budget has compromised its delay reduction effort. Approximately 90% of the Court's costs relate to personnel. Due to required reductions in personnel, the Court has been unable to maintain the staffing levels necessary to continue to reduce the time it takes to process cases in a timely fashion.

The Court remains committed, however, to accomplishing its core mission. That mission is a dual one: to decide the cases that come before it with due deliberation and due speed. The Court has no other mission. It does not provide services (other than information to the litigants); it does not make grants; it does not carry out programs; it does not engage in administrative functions relating to other elements of the judiciary; it does not undertake educational or training programs (other than internally); and its work product is strictly limited to the opinions and orders that it produces. With respect to those opinions and orders, the Court's first obligation is to get them right and its second obligation is to get them out. Despite the budget situation, the Court will continue to do its very best to carry out these dual missions over the coming months.

II. OVERVIEW

A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases, 3,100 by opinion and the rest by order. On average, the Court disposed of these opinion cases in 653 days from the date of filing. The Judges of the Court unanimously determined that this time frame was not within acceptable limits and adopted a comprehensive delay reduction plan on March 8, 2002. The Court has subsequently issued eighteen progress reports detailing its progress on this plan. This nineteenth progress report covers the calendar year of 2006, with emphasis on the fourth quarter. All of the progress reports are available on the Court's website at <http://courtofappeals.mijud.net/resources/drwg.htm>.

B. Goals and Objectives

1. Long-Range Goal

The Court's delay reduction plan involves an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal is to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on or after October 1, 2003.

2. First Short-Term Objective

To achieve its long-range goal, the Court determined that it must first reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days to approximately 497 days. To achieve this reduction, the Court has taken a three-pronged approach: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases more quickly out of the Warehouse, primarily by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed

a number of changes in the court rules to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003. In 2006 the average time to process an opinion case through the Court was 423 days. The Court has therefore achieved its first short-term objective.

3. Second Short-Term Objective

Reducing the overall average processing time for opinion cases from its 2001 level of 653 days to approximately 423 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. The Court has not yet achieved its second short-term objective. To achieve that objective, the Court must eliminate or substantially reduce the time that opinion cases wait in Warehouse or take other appropriate action.

III. RESULTS IN 2006 AS COMPARED TO FIRST OBJECTIVE

A. Processing Times of Opinion Cases

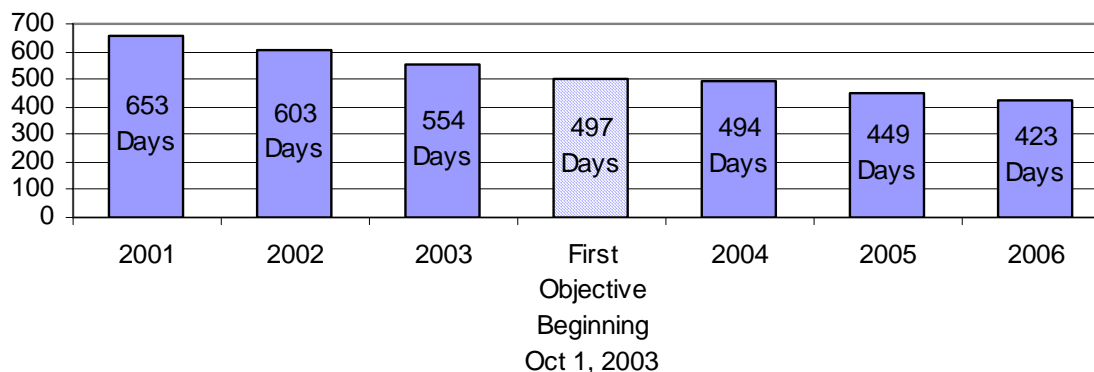
1. *Overall*

As Chart 1 shows, in 2001 the Court took 653 days on average to dispose of an opinion case. In 2002 this time was 603 days, in 2003 it was 554 days, in 2004 it was 494 days, in 2005 it was 449 days, and in 2006 it was 423 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 1 shows, the Court has exceeded its first objective.

Chart 1

	2001	2002	2003	2004	2005	2006
Intake	260	240	235	228	203	182
Warehouse	271	261	225	167	146	159
Research	61	62	64	68	70	52
Judicial Chambers	61	40	30	31	30	30
Totals	653	603	554	494	449	423

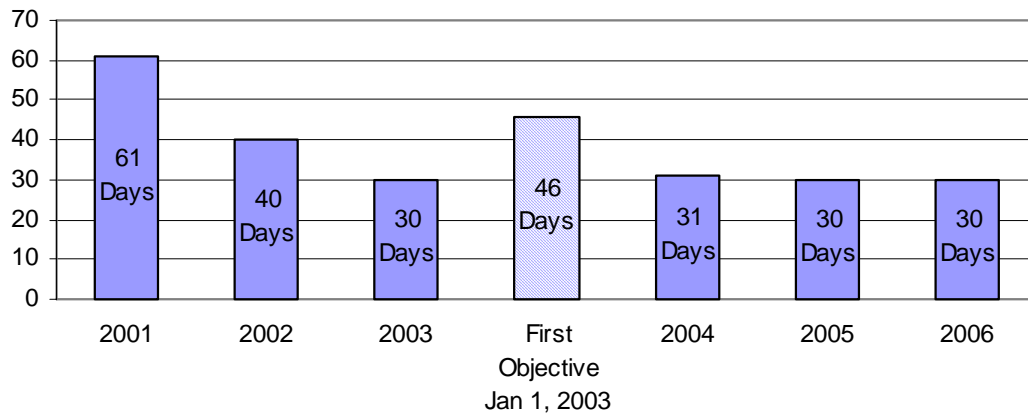
**Graph 1
Overall Time In Processing Compared To First Objective**



2. *Judicial Chambers*

Graph 2 shows that in 2001 for those cases disposed of by opinion the average time spent in the Judicial Chambers was 61 days. In 2002 this time was 40 days, in 2003 it was 30 days, in 2004 it was 31 days, in 2005 it was 30 days, and in 2006 it was 30 days. As Graph 2 shows, the Court has more than met its first objective.

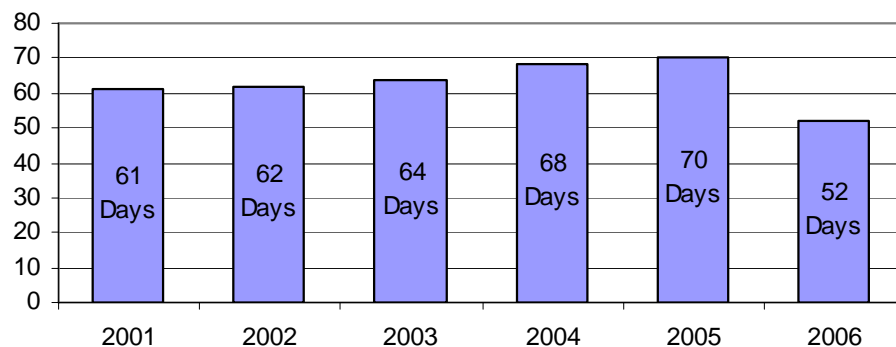
Graph 2
Processing Time In Judicial Chambers Compared To First Objective



3. *Research*

As Graph 3 shows, in 2001 for those cases disposed of by opinion the average time spent in the Research Division was 61 days. In 2002 this time was 62 days, in 2003 it was 64 days, in 2004 it was 68 days, in 2005 it was 70 days, and in 2006 it was 52 days. Graph 3 shows these times on a comparative basis.

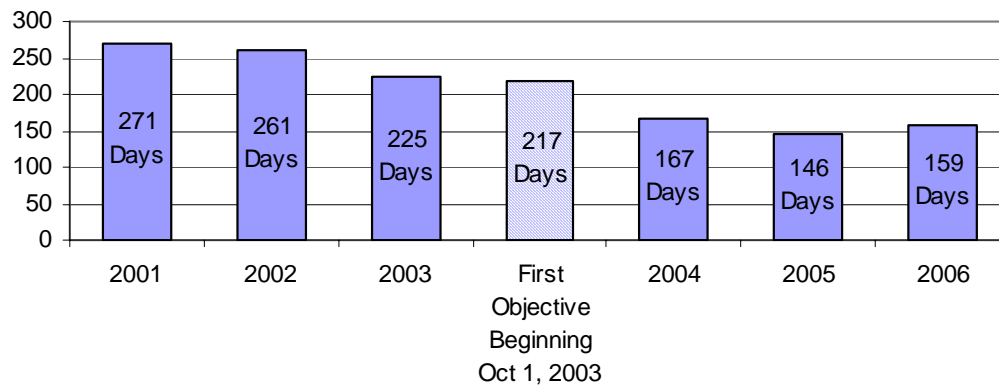
Graph 3
Processing Time In Research



4. Warehouse

Graph 4 shows that in 2001 for those cases disposed of by opinion the average time spent in the Warehouse was 271 days. In 2002 this time was 261 days, in 2003 it was 225 days, in 2004 it was 167 days, in 2005 it was 146 days, and in 2006 it was 159 days. Graph 4 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 4 shows, the Court exceeded its first objective, but fell back somewhat during 2006.

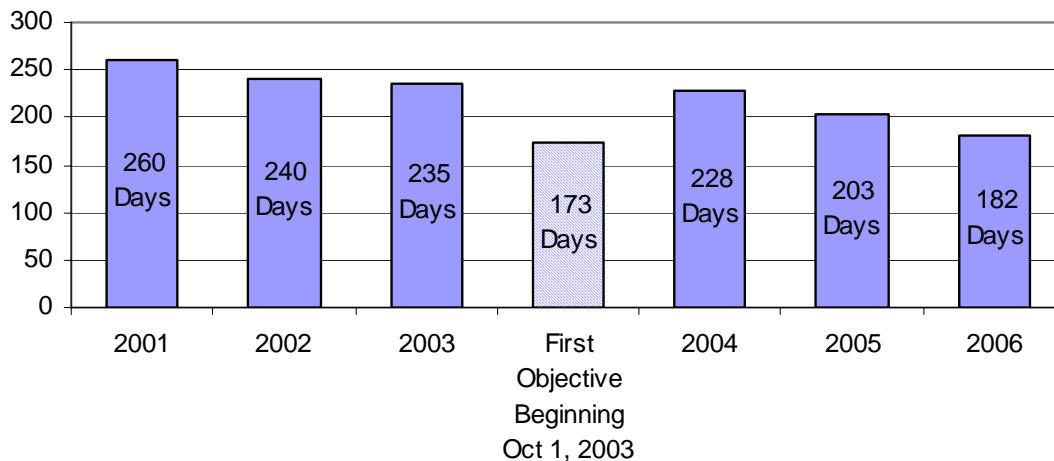
Graph 4
Processing Time In The Warehouse Compared To First Objective



5. Intake

Graph 5 shows that in 2001 for those cases disposed of by opinion the average time spent in Intake was 260 days. In 2002 this time was 240 days, in 2003 it was 235 days, in 2004 it was 228 days, in 2005 it was 203 days, and in 2006 it was 182 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 5 shows, the Court has yet to meet its first objective in this stage.

Graph 5
Processing Time In Intake Compared To First Objective



IV. RESULTS IN THE FOURTH QUARTER OF 2006 AS COMPARED TO PREVIOUS QUARTERS

A. Processing Times of Opinion Cases

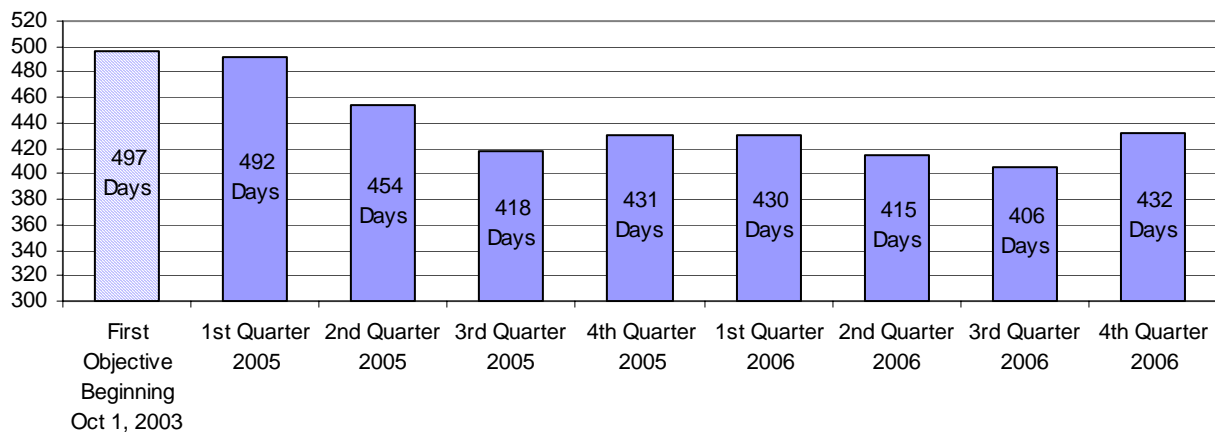
1. Overall

Chart 2 shows that in the first quarter of 2005 the Court took 492 days to dispose of an opinion case. In the second quarter of 2005 this time was 454 days, in the third quarter it was 418 days, and in the fourth quarter it was 431 days. In the first quarter of 2006 this time was 430 days, in the second quarter of 2006 it was 415 days, in the third quarter it was 406 days, and in the fourth quarter it was 432 days. Graph 6 shows these reductions on a comparative basis and relates them to the Court's first objective. As the chart and the graph show, the Court actually regressed during the fourth quarter of 2006, although it did continue to meet its first objective.

Chart 2
Processing Time For Opinion Cases

	First Quarter 2005	Second Quarter 2005	Third Quarter 2005	Fourth Quarter 2005	First Quarter 2006	Second Quarter 2006	Third Quarter 2006	Fourth Quarter 2006
Intake	225	211	182	192	172	180	175	198
Warehouse	166	148	134	137	167	159	152	155
Research	68	68	70	74	65	47	46	47
Judicial Chambers	33	27	32	28	26	29	33	32
Totals	492	454	418	431	430	415	406	432

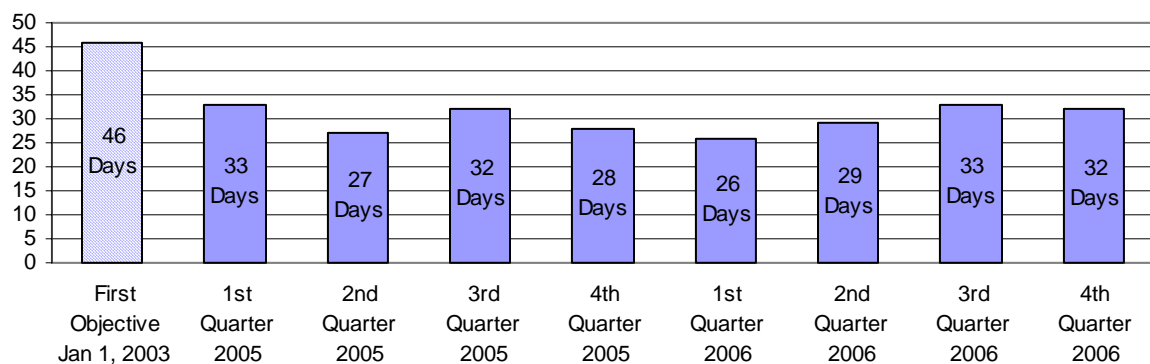
Graph 6
Overall Time In Processing Compared To First Objective



2. Judicial Chambers

Graph 7 shows that in the first quarter of 2005, for those cases disposed of by opinion, the average time spent in the Judicial Chambers was 33 days, in the second quarter it was 27 days, in the third quarter it was 32 days, and in the fourth quarter it was 28 days. In the first quarter of 2006 this time was 26 days, in the second quarter of 2006 it was 29 days, in the third quarter it was 33 days, and in the fourth quarter it was 32 days. Graph 7 shows those reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, the Court continued to meet its first objective for the Judicial Chambers.

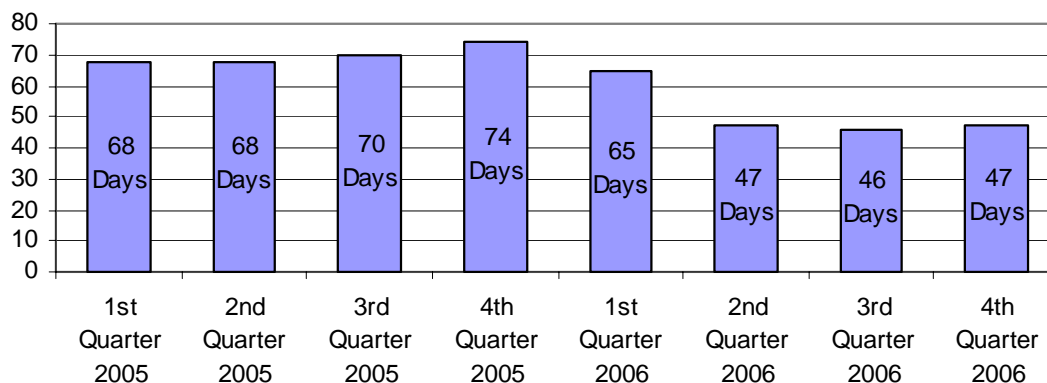
Graph 7
Processing Time In Judicial Chambers Compared To First Objective



3. Research

Graph 8 shows that for the first quarter of 2005, for those cases disposed of by opinion, the average time spent in the Research Division was 68 days, in the second quarter it was 68 days, in the third quarter it was 70 days, and in the fourth quarter it was 74 days. In the first quarter of 2006 this time was 65 days, in the second quarter of 2006 it was 47 days, in the third quarter it was 46 days, and in the fourth quarter it was 47 days.

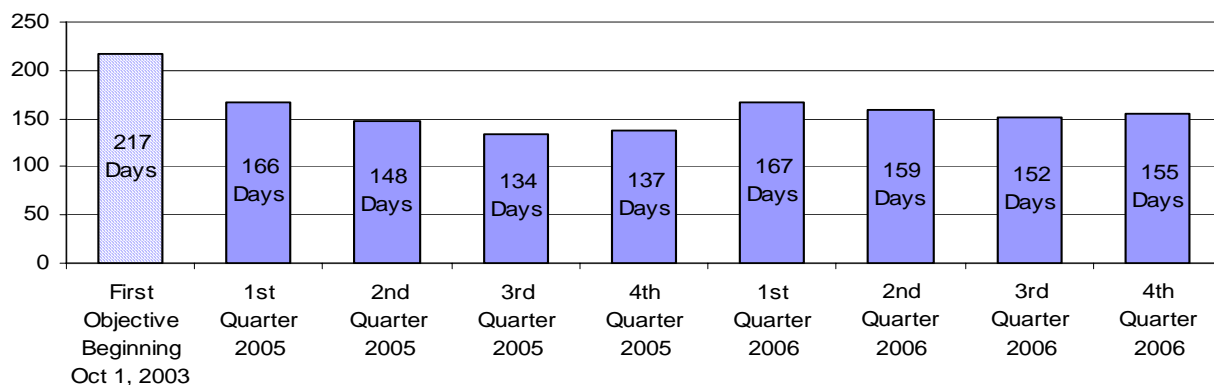
Graph 8
Processing Time In Research



4. Warehouse

Graph 9 shows that in the first quarter of 2005, for those cases disposed of by opinion, the average time spent in the Warehouse was 166 days, in the second quarter it was 148 days, in the third quarter it was 134 days, and in the fourth quarter it was 137 days. In the first quarter of 2006 this time was 167 days, in the second quarter of 2006 it was 159 days, in the third quarter it was 152 days, and in the fourth quarter it was 155 days. Graph 9 shows these reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, the Court actually regressed during the fourth quarter of 2006, although it did continue to meet its first objective for the Warehouse.

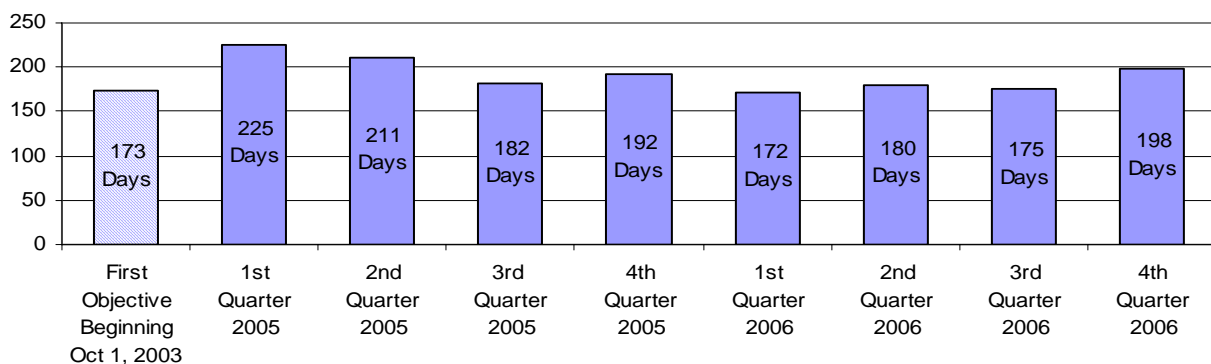
Graph 9
Processing Time In The Warehouse Compared To First Objective



5. Intake

Graph 10 shows that in the first quarter of 2005, for those cases disposed of by opinion, the average time spent in Intake was 225 days, in the second quarter of 2005 it was 211 days, in the third quarter of 2005 it was 182 days, and in the fourth quarter it was 192 days. In the first quarter of 2006 this time was 172 days, in the second quarter of 2006 it was 180 days, in the third quarter it was 175 days, and in the fourth quarter it was 198 days. Graph 10 shows those reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, the Court actually regressed in the fourth quarter of 2006, and it has yet to meet its first objective for Intake.

Graph 10
Processing Time In Intake Compared To First Objective



B. Case Differentiation

Charts 3 through 8 show the overall situation for cases that the Court disposed of by opinion for the years of 2001, 2002, 2003, 2004, 2005, and 2006, respectively, arrayed according to major case types.

Chart 3
2001

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	260	271	229	280	192	187
Warehouse	271	290	214	331	60	56
Research	61	61	62	63	56	52
Judicial Chambers	61	72	27	66	43	30
Total	653	694	532	740	351	325

Chart 4
2002

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	240	254	205	255	178	178
Warehouse	261	290	189	312	58	56
Research	62	59	69	61	66	67
Judicial Chambers	40	49	19	44	26	20
Total	603	652	482	672	328	321

Chart 5
2003

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	235	244	212	251	166	167
Warehouse	225	253	154	271	28	27
Research	64	63	64	63	66	67
Judicial Chambers	30	36	16	33	18	14
Total	554	596	446	618	278	275

Chart 6
2004

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	228	241	201	249	134	131
Warehouse	167	175	150	198	29	28
Research	68	73	59	71	55	55
Judicial Chambers	31	34	25	33	22	21
Total	494	523	435	551	240	235

Chart 7
2005

	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	203	221	173	219	133	132
Warehouse	146	140	157	175	20	15
Research	70	79	55	73	56	56
Judicial Chambers	30	31	29	31	26	24
Total	449	471	414	498	235	227

Chart 8
2006

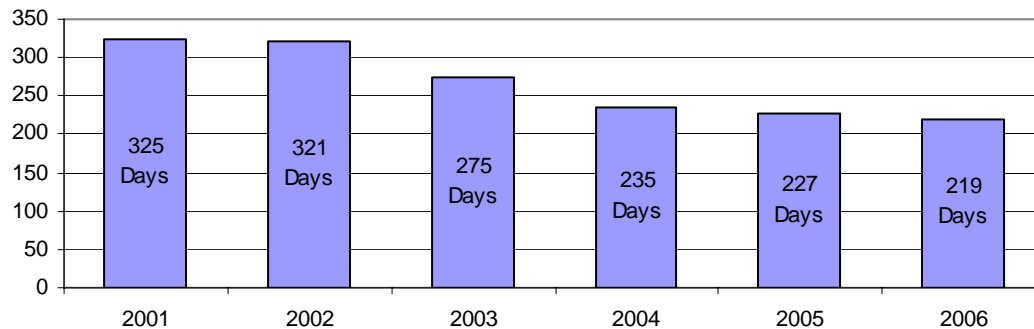
	Overall Average	Regular/ Complex	Summary Panel	Non- Expedited	Expedited	Custody/TPR
Intake	182	194	158	195	122	122
Warehouse	159	167	143	183	48	49
Research	52	64	30	57	30	28
Judicial Chambers	30	32	26	32	21	20
Total	423	457	357	467	221	219

C. Dependency Appeals

The Court has also focused special attention on dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) and deciding custody issues involving minor children in domestic relations cases. In 2001 it took 325 days, on average, to dispose of such cases by opinion. As Chart 8, above, shows, the Court reduced this time to 219 days in the

2006. Of that time, 122 days were spent in the Intake stage. The combined time for all other stages was 97 days, including only 20 days in the Judicial Chambers. Graph 11 shows the situation with respect to dependency appeals beginning in 2001.

Graph 11
Dependency Appeals



D. Case Age

As noted above, the Court decides a mix of cases, some by opinion and some by order. The Court's overall goal is to decide 95% of its cases within 18 months of filing (see Chart 9, below). While the Court is gratified at the small increase of the percentage of cases that are 18 months old or less at disposition, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of all cases within 18 months of filing.

Chart 9
Percentage of Cases 18 Months Old Or Less At Disposition

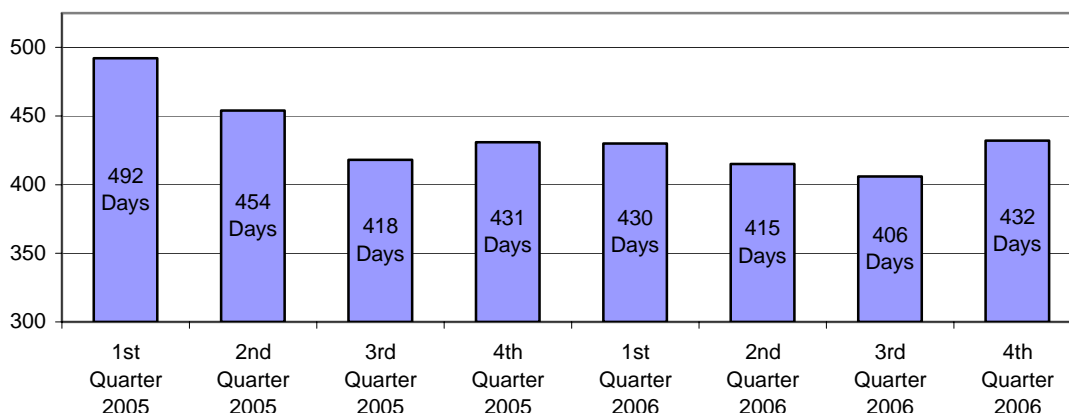
Case Type	2001	2002	2003	2004	2005	2006
Opinion	25.03%	33.31%	46.59%	67.01%	68.80%	68.26%
Order	x ¹	97.36%	97.70%	98.30%	99.14%	99.37%
All	y ¹	66.92%	74.43%	83.85%	86.19%	86.30%

E. The Recent Regression

In terms of the average age of cases that it decides, the Court's progress on delay reduction actually regressed in the fourth quarter of 2006, as Graph 12 shows.

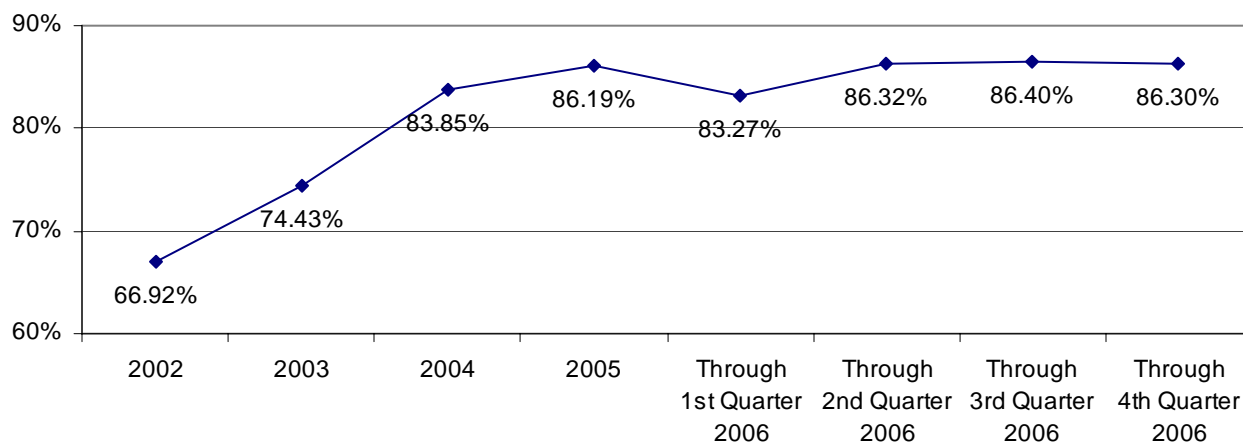
¹ These data are not readily available from the Court's database.

Graph 12
Overall Time In Processing
Quarter-to-Quarter Comparison



The level of dispositions within 18 months remains significant in comparison to the disposition levels in prior years, as Graph 13 shows:

Graph 13
Percentage Of Cases 18 Months Old Or Less At Disposition



V. AREAS OF MAJOR CONCERN

A. Staffing Levels in the Research Division

The Court recognized in March of 2002 that, given existing budget constraints, it could not realistically expect to add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court recognized that it had to further accelerate the disposition of cases decided by opinion. In the presentation of its budget request for FY 2004, the Court emphasized that, to

meet this goal, it needed to add attorneys to its Research Division to drastically reduce or eliminate the Warehouse.

Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds allowed the Court to *increase* its Research Division staff in FY 2004 and to continue the higher staffing levels in FY 2005.

However, the Judiciary budgets for FY 2006 and FY 07 were not good ones for the Court of Appeals. The net effect is that the Court, through holding vacancies open and through attrition, is *reducing* its staffing levels. Inevitably, this has meant that the Court's delay reduction efforts were less effective, with the primary effect being felt in the last quarter of 2006. Chart 10 shows the decline of full time employees in the Court's Senior Research and Prehearing Offices over the last several years.

Chart 10
Full Time Employees in Senior Research and Prehearing

Full Time Employees		
4th Q of	Sr. Research	Prehearing
2001	19.24	33.54
2002	17.71	28.18
2003	14.85	35.97
2004	12.65	31.90
2005	15.58	29.28
2006	14.88	29.70

B. Summary Disposition Fast Track

As noted above, in 2001 an opinion case spent 260 days on average in Intake. In 2002 that average time was 240 days, in 2003 it was 235 days, in 2004 it was 228 days, in 2005 it was 203 days, and in 2006 it was 182 days. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on or after October 1, 2003. The Court expected to meet that objective through adoption of the various changes to the court rules. These proposed changes remain under consideration by the Michigan Supreme Court. Pending a decision on those changes, a Case Management Work Group comprised of members from the Supreme Court, the Court of Appeals, and the Bar developed a plan for the management of appeals from summary disposition orders, the so-called summary disposition fast track or "rocket docket" plan. On October 5, 2004, the Supreme Court approved the plan in Administrative Order No. 2004-5. Pursuant to the administrative order, the Court of Appeals began implementation of the plan on January 1, 2005. In late 2005, the Work Group proposed amendments to the plan and the Supreme Court adopted Amended Administrative Order 2004-5 effective January 1, 2006.

The Court now has 21 months of experience with the summary disposition fast track, 12 months under the original plan and 9 months under the modified plan. The Case Management Work Group has recommended that the program be continued for another year, but with significant modification. See the Case Management Work Group 18-Month Report and letter, which can be found along with all of the Case Management Work Group reports, at <http://courtofappeals.mijud.net/resources/cmwg.htm>. The Supreme Court has adopted the Case Management Work Group's recommendations in its Second Amended Administrative Order 2004-5, effective January 1, 2007. See <http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-5-Amended.pdf>.

C. Waltz/Wyse Cases

Looking forward, the Court is likely to experience an increase in the average times for disposition of cases in early 2007 as the Court disposes of approximately 60 medical malpractice cases that were held in abeyance pending decisions by conflict panels in *Mullins v St Joseph Mercy Hosp*, 271 Mich App 503; 722 NW2d 666 (2006), lv pending, and *Ward v Siano, MD*, ___ Mich App ___, ___ NW2d ___ (Docket No. 265599, released November 14, 2006), lv pending. In many of those cases, the abeyance orders were issued eight to ten months before *Mullins* and *Ward* were decided. As a result, the cases will skew upward the average times for disposition when they are eventually released in the first and second quarters of 2007.

VI. CONCLUSIONS

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all its appeals within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that will reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. In 2006:

- The Court reduced the average overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 423 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case spends in the Judicial Chambers from the 2001 level of 61 days to 30 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 46 days in the Judicial Chambers. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case waits in the Warehouse from the 2001 level of 271 days to 159 days. The Court's objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. The Court therefore has exceeded its first objective.
- The average time a case spends in Intake has been reduced from the 2001 level of 260 days to 182 days. The Court's objective was to reduce the time in Intake to 173 days commencing with the cases filed on or after October 1, 2003. The Court therefore has not met its first objective.
- The Court has reduced the average overall time it takes to process dependency appeals from the 2001 level of 325 days to 219 days.

Chart 11 summarizes the Court's progress toward meeting its first objective.

Chart 11 October 2003 Objective

	2001	2002	2003	2004	2005	2006	Improvement To Date	First Objective	Improvement Needed To Meet First Objective
Intake	260	240	235	228	203	182	78	173	9
Warehouse	271	261	225	167	146	159	112	217	(58)
Research	61	62	64	68	70	52	9	61	(9)
Judicial Chambers	61	40	30	31	30	30	31	46	(16)
Total	653	603	554	494	449	423	230	497	(74)

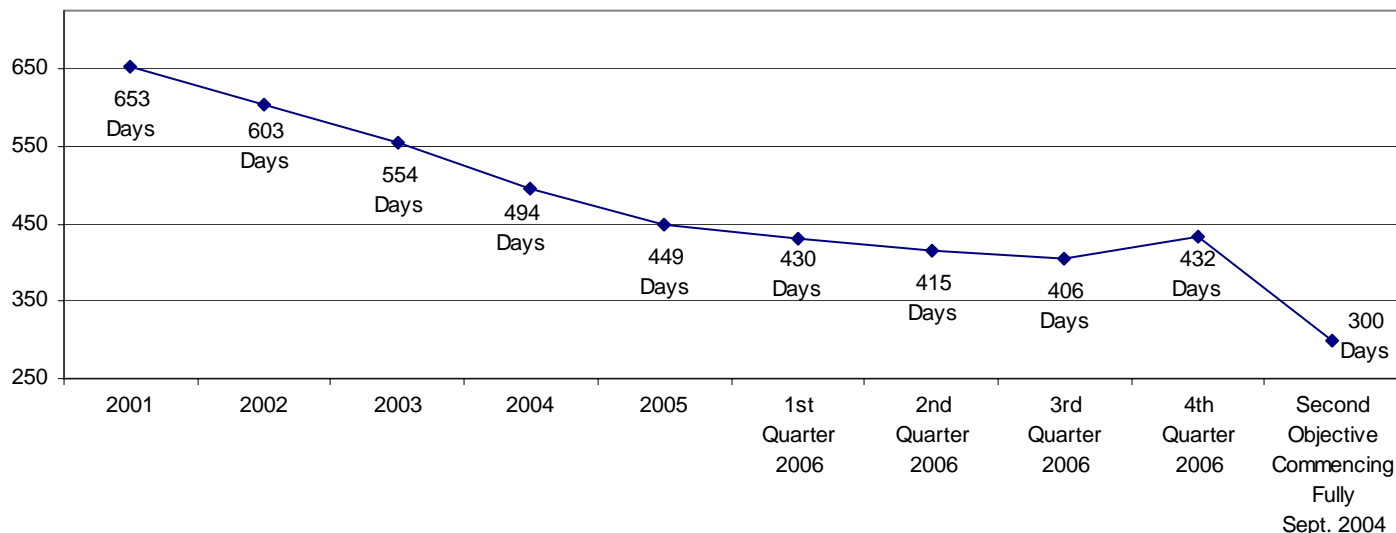
Chart 12 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the average time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days commencing fully in September of 2004.

Chart 12 September 2004 Objective

	2001	2002	2003	2004	2005	2006	Improvement To Date	Second Objective	Improvement Needed To Meet Second Objective
Intake	260	240	235	228	203	182	78	173	9
Warehouse	271	261	225	167	146	159	112	0	159
Research	61	62	64	68	70	52	9	61	(9)
Judicial Chambers	61	40	30	31	30	30	31	46	(16)
Total	653	603	554	494	449	423	230	280	143

Graph 14 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made through 2002, 2003, 2004, 2005, the first quarter of 2006, the second quarter of 2006, the third quarter of 2006, and the fourth quarter of 2006, and the second objective that was intended to commence fully in September of 2004.

Graph 14
Progress Toward Objectives



2006 was a difficult year for delay reduction at the Court of Appeals. The Court's overall goal is to decide 95% of its cases within 18 months of filing. However the Court's FY 2006 and FY 2007 budgets have, along with other factors, compromised our delay reduction effort. Approximately 90% of the Court's costs relate to personnel. Due to required reductions in personnel, the Court has been unable to maintain the staffing levels necessary to continue to reduce the time it takes to process cases in a timely fashion.

The Court remains committed, however, to accomplishing its core mission. That mission is a dual one: to decide the cases that come before us with due deliberation and due speed. We have no other mission. We do not provide services (other than information to the litigants); we do not make grants; we do not carry out programs; we do not engage in administrative functions relating to other elements of the judiciary; we do not undertake educational or training programs (other than internally); and our work product is strictly limited to the opinions and orders that we produce. With respect to those opinions and orders, our first obligation is to get them right and our second obligation is to get them out. Despite the budget situation, we will continue to do our very best to carry out these dual missions over the coming months.